

## THE CITY IS NOT BOUND

By Its Present Contract with the Electric Light Company.

## THE OPINION OF THE CITY ATTORNEY

No Cities Authorities to Show that There is No Obstacle to the City Operating Its Light Plant.

The following is the full text of the opinion of City Attorney Stewart, now on file, upon the city's liability upon the present contract with the Citizens' Electric Light Company:

To the Honorable City Council of the City of Houston, Texas, May 30.—Gentlemen: In compliance with the request of Alderman Dickson I herewith submit my opinion on the now much talked of question as to the right of the city of Houston to build its own electric light plant, and its right to refuse to comply with the terms of the present contract with the Citizens' Electric Light Company.

The following is the full text of the opinion of City Attorney Stewart, now on file, upon the city's liability upon the present contract with the Citizens' Electric Light Company:

However, I do not think that there can be any danger of the city being compelled to comply with the terms of the contract. Before the proposition to issue bonds was submitted to the taxpayers, I gave my opinion that the city of Houston would not be bound by the terms of the contract with the Citizens' Electric Light Company. At the time I so advised, the council was well aware of the terms of the situation and the disastrous results which would follow if the city would be forced to comply with the terms of the contract made with the electric light company, and I did not advise the council before I had investigated the authorities and convinced myself that the city could not be compelled to comply with the terms of the contract with the electric light company.

The contract reads as follows: This contract, made this 11th day of June A. D. 1894, by and between the city of Houston, Texas, hereinafter called the city, and the Citizens' Electric Light and Power Company of Houston, Texas, hereinafter called the company, witnesses:

That the said company for the consideration hereafter named hereby contracts and agrees to furnish the city of Houston such number of electric lamps of 2000 standard candle power each, on the said city may from time to time require. The same to be located as the city may direct, at the company's expense. To be lighted on the present lighting schedule, fifteen minutes before dark until daylight the following months, to wit: January, February, March, April, May, June, July, August, September, October, November, December, and the first night of the year during the term of this contract.

In consideration of the foregoing said city contracts and agrees to pay the said company the sum of \$100 per lamp per annum, payable in monthly installments immediately following each month of service. This contract to be for the term of ten years from the 11th day of June A. D. 1894.

Witness our hands and seals this 11th day of June, 1894.

Signed by the mayor and city secretary with seal attached, and by the Citizens' Electric Light and Power Company with seal attached.

In regard to this contract persons, even some members of the legal profession, have been led astray by construing this contract just the same as they would construe a private contract, whereas, as a matter of fact, it is a contract made with a municipal corporation a different rule governing the same would hold.

In the first place, I believe our State authorities hold that the city is not the authority to make a contract for lighting the city for a period of a number of years so as to hamper succeeding councils in carrying out the expressed will of the inhabitants of the municipality as to different and to them a better mode of supplying lights to the city.

I know that some authorities hold to the contract, but I follow the authorities laid down in the Texas reports. The leading authority on this subject is the case of the City of Brenham vs. Brenham Water Company, 61 Texas, 542. In this case, after reviewing many authorities on the subject, the court makes use of the following very pertinent language: "Municipal officers hold but for short terms and the very purpose for which short terms of office and frequent elections are required, is to leave the control of municipal affairs as near as may be in the hands of the people; to make the municipal administration reflect as near as may be the will of the people. The reasons for this are, first, the necessity for denying to a city council or other governing body the power, by control or otherwise, to disable or hinder from time to time the full and free exercise of any power, legislative in its character, which the people have deemed proper to confer upon such corporation."

This language is clear, emphatic and admits of no doubt applying it to the facts before us, and can any one say that the former council, by its ten years contract with the electric light company, could hinder and thwart the will of the people in its desire to maintain and operate its own electric light plant?

In the above case the city of Brenham made a contract with the Brenham Water Company for supplying the city of Brenham with water for a period of twenty-five years, and our supreme court held that the city council of the city of Brenham had no such power and that the contract was void. The facts in this case should apply with equal force to the present contract with the electric light company.

That eminent and high authority on municipal law, Judge John F. Dillon, in his work on "Municipal Corporations," page 91, says: "Powers are conferred on municipal corporations for public purposes, and as their powers are not delegated, so they can not be bargained or bartered away. Municipal corporations may make authorized contracts, but they have no power to make a contract which shall deprive them of performing their public duty."

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claim under its charter contracted with the city of Chicago to supply it with gas for the next ten years. The power of the city to buy gas under its charter was as full as is the power of the city of Brenham to contract for a water supply, and it was held that the city had no power to contract for so long a term.

In disposing of the case it was said: "The officers of the city—the members of the council—are trustees of the public. There can be no doubt that the right to regulate the lighting of the streets and to furnish power for the same by taxation, is, in its nature, legislative power. It concerns the whole public of the city. The effect of the contract in question, by the city authorities in October, 1894, was to bind their successors for ten years as to those matters of legislation. If it be conceded that the power existed, as claimed, then it practically follows that at the end of the term in 1897, a contract may be made by their successors without limit, and which may bind the public indefinitely. I am unwilling to sanction a principle which, in a case like this, would lead to such results. The safer rule is to hold the contract null and void, on the ground of unconstitutionality in the discharge of their trust. In all cases of contract to run for years the authority to make them should be clear, because they involve pecuniary liability, and it is a tax upon the people. The contract in question is not a contract for the manufacture of gas or electricity for the use of the city and the inhabitants thereof at cost price." It will be noticed from the above that at the time the contract was made the legislature provided that the city could establish its own electric light works. Since then by act of the last legislature the city is given the power to establish and maintain its own electric light plant, and under the act establishing the same, it is provided for, it can hardly be said that the former council could bind the city and prevent legislative control thereof. The authorities are that one council has no such authority. (Dickson vs. City of Houston, 100 Tex. 250.)

Another fact, the charter of the city of Houston in effect at the time the contract was made with the Citizens' Electric Light Company contained this provision, relating to the power of the city to provide for lighting the streets, to-wit: "To provide for lighting the streets by gas, electricity or other means, and for that purpose may establish gas works or electric works for the manufacture of gas or electricity for the use of the city and the inhabitants thereof at cost price." It will be noticed from the above that at the time the contract was made the legislature provided that the city could establish its own electric light works. Since then by act of the last legislature the city is given the power to establish and maintain its own electric light plant, and under the act establishing the same, it is provided for, it can hardly be said that the former council could bind the city and prevent legislative control thereof. The authorities are that one council has no such authority. (Dickson vs. City of Houston, 100 Tex. 250.)

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Young Men's Christian Association boy who broke the record in swimming at Austin. It will be interesting to know that the international committee of the Young Men's Christian Association in New York City have, through the war department at Washington, made arrangements for doing a great work among the army. They have provided large and commodious tents with a competent secretary, provided with equipment which will enable him to furnish a long felt need in army life.

The tents are equipped to offer the soldiers a reading room with the daily papers, magazines and other reading matter; games of skill and recreative sports; facilities for correspondence, entertainments, music, music meetings, and as many other social and religious privileges as possible, the aim being to make these places of resort homelike and attractive to the men and surround them with wholesome and uplifting influences.

Perseverance and authorization have been secured from the officials at Washington, who have given their hearty endorsement to the plan. The movement now being not designed to stop with the war, but to hereafter permanent work in the regular army.

## LAST LEGAL RESORT.

## UNITED STATES SUPREME COURT DECIDED AGAINST TINSLEY.

Who Has Been in Jail for Contempt Since 1897—History of the Case.

Messrs. Ewing & Ring yesterday afternoon received a telegram from the clerk of the United States supreme court, reading: "Orders of circuit court and court of criminal appeals in Tinsley cases affirmed."

It will be remembered that when Captain William Christian was appointed receiver for Glenwood cemetery the court directed Thomas Tinsley, who was the corporation's president, to turn over all the corporation's property to the receiver. Upon complaint by the receiver that Tinsley had refused to comply with the order as to certain items of property, Tinsley was ordered by the court, Judge John G. Tappan, to show cause why he should not comply and be punished for his contempt in disobeying the order. The proceeding resulted in his contempt and he was ordered to pay \$100 as fine for his contempt and to be committed to the receiver the company's minute book and certain of its notes which he held, and also a trust fund of \$100,000, and that he stand committed to jail until compliance.

This was on February 6, 1897, since which time Tinsley has preferred to remain in jail rather than comply.

He applied for a writ of habeas corpus to the court of criminal appeals, which was granted, but, upon hearing, he was remanded to prison.

He then applied to the Texas supreme court for the writ, but that court declined to interfere.

He then made application to Judge David E. Bryant of the United States district court, who granted the writ, but, on way being remanded the prisoner to the custody of the sheriff.

He then applied for relief to the United States court of appeals at New Orleans, but that court refused to interfere.

He then sought, during the vacation of the Federal supreme court, to get a super-receas from one of the justices of that court, but this was refused.

The next step was a writ of error and appeal to the United States supreme court, and the order of the court of criminal appeals and of Judge Bryant. The cases were argued before the United States supreme court on May 6 last by Mr. James I. Houston of New York for Mr. Tinsley, and by Mr. E. W. Ring for the receiver.

The result was, as above stated, that it is supposed that Mr. Tinsley will now comply with the order, as there are no more courts on this side of the waters to which he may appeal.

CITY BRIEVES.

Justice Hill visited Wm. Lynch and Miss S. H. Robinson in marriage Monday night.

The Acme laundry, on Preston avenue, having a United States flag over its building yesterday.

There is an undelivered telegram at the Western Union telegraph office for B. F. Williamson.

The Ladies' Auxiliary of the Abnath club will meet at the residence of Mrs. J. W. Chandler at 8 P. M. today.

The committee having in charge the soldiers' benefit concert were busily engaged yesterday in the different details of the work.

The South Texas Postoffice and Postoffice section will hold a regular meeting tonight at 8 P. M. at the residence of Mrs. E. W. Ring.

for Austin to attend the meeting of Terry's Texas Rangers.

Mr. Robert F. Fitz of Elgin was yesterday at the Hutchins.

Hen. J. D. Childs and niece of San Antonio are at the Lawlor.

Messrs. Pat Foley and Otto Sens left yesterday for San Francisco.

Mr. B. B. Saunders of Austin was a guest at the Bristol yesterday.

Mr. and Mrs. Charles Knobloch of Bryan are among the arrivals at the Capitol.

Mrs. O'Neal and Miss Ella Rheinhardt of Fort Worth are guests at the Lawlor.

Mr. R. D. King, a merchant of Crockett, was registered at the Bristol yesterday.

Mr. Fred Mayfield, editor of the Huntsville Enterprise, spent yesterday in the city.

Mr. and Mrs. D. H. Heaton of Cuero were in the city yesterday, guests at the Lawlor.

Mrs. T. S. Bliss and Miss Adela Goring of Lake Charles are registered at the Hutchins.

Judge W. R. Cavitt of Bryan and Mr. D. A. Paulus of Hallsboro were in the city yesterday.

Miss Ben Parker returned from Temple yesterday, after an absence of two weeks with her mother.

Miss Emily Beavens has returned from Sartoria and will remain here the balance of the summer.

John T. Lee left last night on a trip that will carry him to Niagara and New York before his return.

Captain and Mrs. McKensie of the Salvation Army, left yesterday for Galveston, but will return "home" to spend the summer.

Mr. J. K. Hester and children of Victoria were at the Lawlor yesterday, and left last night to visit friends in New Orleans.

Miss Alma Miller, daughter of Captain Charles Miller, has returned from Savannah, where she has been attending school.

Mr. H. J. Cole, who represents one of the largest manufacturing concerns in the United States, is stopping at the Bristol.

Mrs. E. P. Manning, who is the wife of the late Senator Manning, was in the city yesterday, en route to her home in Corpus Christi.

Major and Mrs. Whaley are at home at the former residence of Miss Mabel Heller, who has been for some time in the city, accompanied by her sister, Viola, and her husband, Mr. J. H. Heller.

be one of the most unique entertainments ever presented in Houston. The voting for the most popular young lady to present the Massie Rifles' flag will take place on the first night.

Building Permits.

The following building permits were issued yesterday from the office of the city engineer:

Joe Penra, repairs to building, Fawcett and Prairie, \$10.

George Elise, addition to house, 19th and Addition, \$125.

A. Levy, repairs to house, San Felipe and Valentine, \$160.

They Quit Selling Beer.

A note from Giovanni Picaro and J. Inzardo states that the Italian union of retail beer dealers held a meeting yesterday and decided to discontinue selling beer at account of the high price they are asked to pay the local brewers.

The Opening Concert.

The first concert of the series of summer night concerts for the season was given last night at Turner Hall garden under very flattering auspices. Herbs Light Guard band furnished the music and gave a most entertaining programme.

Only one cent a word for Post "Want Ads." and still less if they run four times or over. Have you tried them? Nothing cheaper or more sure to bring results.

Wootan Wells.

This health and pleasure resort is now wide open for reception of visitors. We have hotel and boarding houses with prices to suit all classes. Our excursion ticket is sale on most of the railroads.

We are now buying an artesian well with the hope of obtaining hot water.

A short visit to Wootan well will do anybody good.

Wootan Wells Co.

More Cuff Buttons.

We have a new supply of Cuff Buttons for the benefit of our customers and friends who have not yet received any. To be had at office of Dr. J. S. Packard's Troy Laundry, 912 Prairie avenue. Phone 322.

Coke and Tar—For sale by Houston Gas Light Co.

MAJOR A. J. CRIQUI

the Smallest Perfect Man on Earth, will be in the Butterick Pattern Department taking subscriptions for Butterick's Dollmaker, commencing with Summer number, having 15 colored plates. Subscription price, 15c. per copy, or mailed to your address for \$1.00 per year. Reduced prices of Butterick's new patterns are 5c, 10c, 15c, 20c, 25c.



6c, 7c, 8c and 10c PER FOOT. Buys Rubber Garden Hose

that can't be beat for the money in Houston. Lawn Sprinklers, Reels, Nozzles, etc., at lowest prices.

Bering-Cortes Hardware Comp'y, Prairie Avenue and Milam Street.

We Have Declared War

on a lot of Shoes in our store, and are going to fire them out regardless of cost.

The First Volley is a lot of Children's Sandals and Oxford Ties that formerly sold for \$1.50 and \$2.00. They're now..... 25c

The Second Volley is a lot of Ladies' Oxfords and Sandals that were \$2.50 and \$3.00. They're now..... 50c

The Third Volley is a lot of Men's Tan Lace Shoes that were \$3.00, \$4.00 and \$